

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TELESA SMITH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Case No. 4:19-CV-2890 NAB

MEMORANDUM AND ORDER

This matter is before the Court on the parties' Motion to Notify Beneficiaries of the Appointment of a Special Administrator. [Doc. 28.]

Plaintiff Telesa Smith filed this federal torts claim and Missouri/Illinois wrongful death action on behalf of her deceased son Philande Smith (a/ka/a Philanda Smith) against the United States of America. Philande Smith was a prisoner at a federal correctional institution in Greenville, Illinois. The complaint alleges that he sought medical care from 2006 to 2016 at the facility regarding gastrointestinal complaints, rectal bleeding, and blood in his stool. On May 13, 2016, he was transferred to Christian Northeast hospital in Missouri where he was diagnosed with metastatic cancer of the sigmoid colon and rectum, which had spread to his lungs and liver. Philande Smith died from the cancer on June 11, 2016. In two counts pursuant to the Federal Torts Claims Act and wrongful death/medical negligence under Missouri and Illinois law, Telesa Smith alleges that the prison was negligent in the diagnosis and treatment of Philande Smith's cancer. Specifically, Telesa Smith contends that the prison failed to perform diagnostic tests, refer Philande Smith to outside treatment, and failed to properly perform physical tests. The parties

have notified the Court that this case has been settled. The parties are finalizing settlement paperwork.

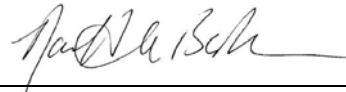
If the only asset of a deceased's estate is a wrongful death action, the court, upon motion of any person that would be entitled to recovery under the act and after notice to the deceased heirs or legatees as the court directs, may appoint a special administrator for the deceased party for the purpose of prosecuting or defending the action. 740 Ill. Comp. Stat. 180/2.1 (2001). On April 15, 2020, the Court granted Plaintiff's motion to appoint Telesa Smith as the Special Administrator of the Estate of Philande Smith for the purposes of pursuing this wrongful death action. [Doc. 19.] There is no record, however, that the heirs or legatees were notified of Telesa Smith's appointment as Special Administrator. Therefore, the Court will vacate its previous order appointing Telesa Smith as Special Administrator. [Doc. 19.] The Court intends to appoint Telesa Smith again, if no objection is received from Philande Smith's heirs or legatees. The Court will order the Clerk of Court to send a copy of this Memorandum and Order to the persons identified in Document 30 at the addresses stated therein by first class mail. The heirs and legatees identified in Document 30 have until 14 days after the date of this order to file a response in opposition to the appointment of Telesa Smith as Special Administrator. If no opposition filed, the Court will re-appoint Telesa Smith as Special Administrator.

Accordingly,

IT IS HEREBY ORDERED that Court's previous order appointing Telesa Smith as Special Administrator is **VACATED**. [Doc. 19.]

IT IS FURTHER ORDERED that the Clerk of Court shall send a copy of this Memorandum and Order to the persons identified in Document 30 of the Court record in this case at the addresses stated therein by first class mail.

IT IS FURTHER ORDERED that the heirs and legatees identified in Document 30 must file any response in opposition to the appointment of Telesa Smith as Special Administrator within fourteen (14) days of the date of this order. If no opposition filed, the Court will re-appoint Telesa Smith as Special Administrator for purposes of prosecuting this action.



NANNETTE A. BAKER
UNITED STATES MAGISTRATE JUDGE

Dated this 25th day of August, 2020.